



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Rusty Meurer
Counsel for the Laredo Community College
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042

OR2015-11327

Dear Mr. Meurer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 566926.

The Laredo Community College (the "college"), which you represent, received a request for the evaluations of the college's president and all board members. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.111 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the privacy interests of third parties. Accordingly, you state you notified the third parties of the right to submit written comments to this office stating reasons why the information should or should not be released.² See Gov't Code § 552.304. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted the evaluation of the college's president. Thus, to the extent any responsive evaluations of the college's board members existed when the present request was received, we assume such information has been released. If such

¹Although you also raise rule 503 of the Texas Rules of Evidence, you have provided no arguments in support of the applicability of that rule. Accordingly, we assume you no longer assert rule 503. See Gov't Code §§ 552.301, .302.

²As of the date of this ruling, we have not received comments from any third parties.

information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The submitted information consists of a completed evaluation of the college's president. Accordingly, the submitted information is subject to section 552.022(a)(1). Although you raise section 552.111 of the Government Code for this information, this is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Therefore, the college may not withhold the submitted information under section 552.111 of the Government Code. However, because section 552.101 of the Government Code can make information confidential for purposes of section 552.022, we will consider your argument under that section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision No. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern). Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow).

The college has failed to demonstrate how the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the college may not withhold

any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the college must release the submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 566926

Enc. Submitted documents

c: Requestor
(w/o enclosures)